

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 161 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ABEDINBHAI TURABBHAI

Versus

CHHAGANBHAI DEVABHAI BHARWAD

Appearance:

MR KJ PANCHAL for Mr JM PANCHAL for Petitioner
MR H.K. PARMAR FOR for Respondents Nos.
1 to 8, 10-14 and 16 & 17.
ABATED for Respondent No. 9, 15 & 18
Ms KATHABEN GAJJAR,
ADDL. PUBLIC PROSECUTOR for Respondent No. 19

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 23/06/2000

CAV JUDGEMENT

1 This is a Criminal Revision Application filed under Section 401 read with Section 397 of the Criminal Procedure Code, 1973, (for short, Cr.PC) filed by original complainant of Sessions Case No.112 of 1987 challenging the order of partly conviction and partly acquittal passed by the learned Additional Sessions Judge (Mr F.R. Makwana), Ahmedabad (Rural) at Mirzapur (who will be referred to hereinafter as "the learned trial Judge") by rendering his judgement exh.88 dated 30th January 1989 in Sessions Case No.112 of 1987 which was pending on his file.

2 During the pendency of this Criminal Revision Application, on 10.3.2000 it was submitted by Mr H.K. Parmar that Revision-Opponents Nos.9, 15 and 18 have died and therefore vide order dated 10.3.2000 this Criminal Revision Application is abated against Revision Opponents Nos.9, 15 and 18.

3 Here in this present matter the Revision Petitioner was original complainant who lodged a complaint in Dholka Police Station and on the basis of that complaint the investigation was conducted and ultimately charge sheet was filed against Revision Opponents Nos.1 to 18 in the Court of the learned Judicial Magistrate, Dholka, and therefore the Revision Opponents Nos.1 to 18 were accused before the Court of the learned JMFC, Dholka, who ultimately committed the case to the Sessions Court, Ahmedabad (Rural) at Mirzapur and therefore for the sake of convenience the parties will be referred to hereinafter as the complainant and the accused.

4 The facts leading to this Criminal Revision Application in a nutshell are as follows:-

5. The case of the complainant as per the complaint at Exh.65 dated 5.3.1987 lodged by original complainant i.e. Revision-Petitioner Abedinbhai Turabhai Vahora, resident of village Viridi, Taluka Dholka, District Ahmedabad, is as follows:

The complainant is having his agricultural land admeasuring about 60 vighas in village Viridi and he is doing agricultural work in that land. Since about 15 years before the date of the complaint Kasambhai Yusubhai (deceased who was the uncle of the complainant) was the Sarpanch of that village. One another field of Ibrahimbhai Hasanbhai is also situated on the outskirts of village Viridi. Sarpanch Kasambhai had taken that land of Ibrahimbhai Hasanbhai for cultivating the crop of

wheat on share basis.

6 On or about 5th March 1987 at about 9 AM Mohsinbhai Kasambhai (accused no.7) along with 7-8 labourers had gone to that field of Ibrahim Hasanbhai. The complainant had also gone to his field which is known as "Khijadiyawala field" for agricultural work at about 9.15 AM and at that time the labourers were cutting the crop of wheat. At that time one Kalu Mohan, (accused no.7) had come with his two cows and other cattle were following said Kalu Mohan. It is the case of prosecution that said Kalu Mohan, accused no.7, had allowed his cattle to graze in the field in which there was a crop of wheat of Sarpanch. Therefore, Mohsinbhai (PW No.11) asked Kalu Mohan to take out his cows from the field. Thereupon Kalu Mohan was enraged and he spoke filthy language, by giving abuses and gave a stick blow on the back of said Mohsin. At that time the complainant was watching that incident from his field known as Khijadiyawala field. Mohsinbhai under fear ran away from his place and he went to village and he returned with his father to that place. After arrival of Sarpanch Kasambhai, he also asked that Kalu Mohan to take out cattle from the field. In the meanwhile other shepherds, Chhagan Deva, accused no.1, Dhara Kachra, accused no.4, Maman Bhara, accused no.3, Naku Bhikha, accused no.2, Mera Bhikha, accused no.16, Jeevan Kachra, accused no.6, Kala Kachra, accused no.11, Bapu Bhura, Hari Bhara, accused no.8, and other 15-20 shepherds of village had come with their cattle to that place. Deceased Kasambhai and his son Mohsin asked all those shepherds to take out their cattle from the field. The complainant also went to that place. Kalu Mohan, accused no.7 gave abuses to Sarpanch and inflicted a stick blow on the head of said Sarpanch. Immediately thereafter other shepherds who had come with cattle also made an assault on Sarpanch. They started to inflict blows of sticks on Mohsin, son of Sarpanch. On hearing this hub-bub, Sajauddin Nooruddin, PW No.10, Hathimbhai Nooruddin, Ibrahim Mohammed Mukhi, P.W. No.15, Jabir Nooruddin, Dawood Abbas and Hathi Mohammed Mukhi and others had come from the village. They did not come in group but they came there one after the another. Those persons who had come from village were also assaulted by shepherds. Bharwad Kalu Mohan, accused no.7, Chhagan Deva, accused no.1, Dhara Kachra, accused no.4, and Maman Bhara, accused no.3, started to inflict blows of sticks indiscriminately on said Sarpanch Kasambhai Yusufali and as a result of this, Sarpanch fell down on the ground and thereafter other shepherds started to beat Sarpanch Kasambhai by sticks. It is the case of the prosecution, as stated in the complaint, that persons

of the complainant party who had come from the village were also injured by the shepherds as the shepherds had inflicted blows of sticks and other weapons on those persons.

7 Thereafter shepherds ran away from that place.

The complainant rushed to the village and he came back with a tractor of Sajauddin Nooruddin along with Abasbhai Rajabbhai. The complainant noticed that Sarpanch Kasambhai Yusufali was seriously injured and had sustained injuries and he had become unconscious. The complainant and the persons of the complainant party brought Sarpanch Kasambhai and other injured persons by taking them in tractor to the village. When they reached to the house of Sarpanch, they found that Sarpanch Kasambhai was dead. Thereafter the complainant went to Dholka Police Station and lodged his complaint at 13.05 hours on the same day i.e. on 5.3.1987. That complaint came to be registered as C.R.No.I 42 of 1987 of Dholka Police Station. That case was investigated by PSI of Dholka Police Station and he ultimately filed charge sheet against 18 accused persons in the court of the learned Judicial Magistrate First Class, Dholka, on 24.07.1987. That charge sheet came to be registered as Criminal Case No.1133 of 1987. The learned Magistrate passed a committal order in that Criminal Case No.1133 of 1987 on or about 11.9.1987. As that case was committed to the Sessions Court, Ahmedabad (Rural) at Mirzapur, that case was registered as Sessions Case NO.112 of 1987.

8. It appears from the record and from judgement challenged in this Criminal Revision Application that on or about 23.9.1988 the learned trial Judge framed the charge exh.14 for the offences punishable under Sections 143, 147, 148, 302, 325, 323 read with Section 149 of the Indian Penal Code together with offences punishable under Sections 161 and 162 of the Gujarat Panchayats Act. On recording the plea of each accused, all pleaded not guilty to the charge and they stated to the learned trial Judge that they wanted to be tried. Thereafter the prosecution examined about 16 witnesses in the case. The prosecution has also produced documents on which it was relying in the case against the accused. Thereafter further statements of the accused under Sections 313 of Cr.PC were recorded. After hearing the arguments of the learned advocates for both the parties, the learned judge of the trial Court, by rendering his judgement exh.88 dated 30.1.1999 was pleased to come to the conclusion that case against the accused nos.1, 2, 3 and 7 so far as it relates to offences punishable under Sections 161 and 162 of the Gujarat Panchayats Act, was proved beyond

reasonable doubt and so far as the case against all the accused for remaining offences, he was pleased to come to a conclusion that the prosecution failed to prove the case beyond the reasonable doubt against all the accused. By that judgement accused nos.1, 2, 3 and 7 were convicted for the offences punishable u/s 161 and 162 of the Gujarat Panchayats Act and each of them was sentenced to pay a fine of Rs.100/- and in default to undergo S.I. for 7 days. He acquitted all the accused including accused nos.1, 2, 3 and 7 for the rest of the offences i.e. for the offence punishable under Sections 143, 147, 148, 302, 325, 323 read with Section 149 of the Indian Penal Code.

9. The State Government has not preferred any acquittal appeal against any of the accused. Being aggrieved against and dissatisfied with the said judgement exh.88 dated 30.1.1989 passed by the learned trial Judge in Sessions Case No.112 of 1987 which was pending on his file, the original complainant Abedin Turabhbhai has preferred this Criminal Revision Appliation challenging the correctness, legality and propriety of the acquittal order passed against all the accused. At this stage, it may be noted that accused nos.1, 2, 3 and 7 who were convicted and sentenced for offences punishable u/s 161 and 162 of the Gujarat Panchayats Act have not preferred any appeal against conviction to this Court, as stated by the learned advocates for both the parties.

10 I have heard Shri K.J. Panchal, the learned advocate for the Criminal Revision-Petitioner and Mr H.K. Parmar, the learned advocate for the Criminal Revision Opponents Nos.1 to 8, 10 to 14, 16 and 17 in detail at length. I have also heard Ms Kathaben Gajjar, learned APP for the State i.e. Revision Opponent No.19. I have perused the R & P of the case which has been called for from the lower court.

11 Shri K.J. Panchal, the learned advocate for the Criminal Revision-Petitioner has by citing an authority of K. CHINNASWAMYREDDY V. STATE OF ANDHRA PRADESH reported in AIR 1962 SC 1788 argued that it is open to the High Court to set aside an order of acquittal even at the instance of the private parties though the State may not have thought it fit to prefer an appeal but this jurisdiction should be exercised by the High Court in exceptional cases when there is some glaring defect in the procedure or there is a manifest error on the point of law and consequently there has been flagrant miscarriage of justice. In this cited case the

Honourable Supreme Court has given some instances in which the High Court can interfere with finding of acquittal in revision. The list of these instances is not exhaustive but illustrative. As stated in para 7 of that judgement following some instances are given by the Hon'ble Supreme Court in which the High Court can interfere with the finding of the acquittal:-

- (i) Where the trial court has no jurisdiction to try the case but has still acquitted the accused.
- (ii) Where the trial court has wrongly shut out the evidence which the prosecution wished to produce.
- (iii) Whether the appellate Court has wrongly held evidence which was admitted by the trial Court to be inadmissible.
- (iv) Where the material evidence has been overlooked either by the trial court or by the appellate Court.
- (v) Where the acquittal is based on compounding of the offences which is invalid under the law.

12 It has been observed in para 7 of the said judgement that these and other similar questions can be properly held to be cases of exceptional nature where the High Court can justifiably interfere with an order of acquittal.

13 Shri K.J. Panchal, the learned advocate for the petitioner has argued that in this case the learned Judge of the trial Court has given much importance to the minor contradictions and omissions which were found in the evidence of the witnesses examined by the prosecution and evidence of prosecution witnesses is not correctly appreciated in the manner in which it ought to have been appreciated. He has further argued that looking to the evidence led by the prosecution the learned Judge of the trial Court ought to have held that the case against the accused is proved beyond reasonable doubt and the learned judge of the trial Court ought to have convicted and sentenced all the accused. According to Mr K.J. Panchal, the case of the petitioner falls within the category of instance which is referred to in para 7 of the authority cited by him.

14 As against the aforesaid arguments, Shri H.K. Parmar, the learned advocate for the respondents has by reading the judgement argued that the learned judge of the trial Court has appreciated the evidence of the witnesses examined by the prosecution in correct perspective and the learned Judge of the trial Court has come to the conclusion that the case against the accused

is not proved beyond reasonable doubt. During the course of arguments, he further argued that from the very incident a cross case was also lodged against the present complainant and the prosecution-witnesses and other persons of the party of the complainant and that case was registered as Sessions Case No.109 of 1987. As that case was a cross case of this present case, the same learned judge of the trial Court tried both the cases simultaneously but he delivered the judgements in both the cases on the same day i.e. on 30.1.1989. He has produced a certified copy of the judgement rendered in Sessions Case No.109 of 1987 and the same has been taken up on record of this appeal and that judgement would be part and parcel of this Criminal Revision Application.

15 In short, it is the case of the petitioner that the evidence of prosecution witnesses is not properly appreciated by the trial Court whereas on the other hand it is the case of the respondents that the learned Judge has appreciated the evidence properly and in correct perspective and no other finding could be reached on the basis of the the evidence led by the prosecution except that of acquittal.

16. Before I discuss the contentions of rival parties, it would be in the fitness of things to place on record the ambit and scope of Section 401 of Cr.PC and the scope of powers of the High Court which can be exercised in this type of Criminal Revision Applications.

17 In the case of *Khatra Basi Samal and another v. The State of Orissa etc.* AIR 1970 SC 272 the Hon'ble Supreme Court has held in paragraph 10 and 11 as follows:-

"10. This Court has had to examine the jurisdiction of the High Court under this section on several occasions. In *D. Stephens v. Nosibulla* (1) it was pointed out (see at p. 291) that :-

"The revisional jurisdiction conferred on the High Court under section 439 of the Code of Criminal Procedure is not to be lightly exercised, when it is invoked by a private complainant against an order of acquittal against which the Government has a right of appeal under section 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the

correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower court has taken a wrong view of the law or misappreciation of the evidence, on record".

Again in Logendranath Jha & Others v. Polailal Biswas 1951 SCR 576 = (AIR 1951 SC 316) where the High Court had set aside an order of acquittal of the appellants by the Sessions Judge and directed their retrial, this Court (see at p. 681) said :-

"Though sub-section (1) of section 439 authorises the High Court to exercise, in its, discretion, any of the powers conferred on a court of appeal by section 423, sub-section (4) specifically excludes the power to 'convert a finding of acquittal into one. of conviction'. This does not mean that in dealing with a revision petition by a private party against an order of acquittal, the High Court could in the absence of any error on a point of law reappraise the evidence and reverse the findings of facts on which the acquittal was based, provided only it stopped short of finding the accused guilty and passing sentence on him. By merely characterising the judgment of the trial court as 'perverse' and 'lacking in perspective', the High Court cannot reverse pure findings of fact based on the trial court's appreciation of the evidence in the case".

In K. Chinnaswamy Reddy v. State of Andhra Pradesh, 1963-3 SCR 412 at p. 418 = (AIR 1962 SC 1788 at p.1791) the court proceeded to define the limits of the jurisdiction of the High Court under s. 439 of the Criminal Procedure Code while setting aside an order of acquittal. It was said:

": this jurisdiction should in our opinion be exercised by 'the High Court only in exceptional cases, when there is some glaring defect in the procedure and there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. It is not possible to. lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our

opinion justify the. High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial Court or by the appeal Court or where the acquittal is based on a compounding of the offence, which is invalid under the law."

18. In case of NARAIN PRASAD V. STATE OF RAJASTHAN reported in AIR 1978 Raj. 162 the Full Bench of the Rajasthan High Court has observed in para 25 as follows:-

"The revisional jurisdiction is normally to be exercised only in exceptional cases where there is a glaring defect in the procedure or there is a manifest error of point of law and consequently there has been a flagrant miscarriage of justice."

19 In case of RAMU ALIAS RAM KUMAR & ORS. V. JAGANNATH reported in AIR 1994 SC 26 it has been observed in para 2 as follows:-

"It is well settled that the revisional jurisdiction conferred on the High Court should not be lightly exercised particularly when it was invoked by a private complainant. This Court in number of cases has reiterated this view."

Keeping in mind the aforesaid legal position i.e. ambit and scope of Section 401 of Cr.PC and the powers to be exercised by the High Court in such type of Criminal Revision Applications, the submissions are dealt with hereinbelow.

20. It would be better to know certain admitted facts which cannot be denied by either of the parties.

(i) The present Revision-Petition Abedin Turabhai Vahora was the complainant and he lodged the complaint at exh.65 dated 5.3.1987 being C.R. I No.42 of 1987 of Dholka Police Station and that complaint was lodged for an incident which took place at 10 hours on 5.3.1987 on the outskirts of village Viridi which is 18 km away on the southern

side of the police outpost. That complaint was lodged against 18 accused persons who are Revision-Opponents in this matter.

(ii) At 14.15 hours on the same day for the same incident which took place at 10 hours on 5.3.1987 on the outskirts of village Virdi the present Revision Opponent No.1 i.e. accused no.1 had lodged a complaint against the present complainant, deceased Kasambhai Yusubbhai and other prosecution witnesses who were examined by the prosecution in the case on hand.

(iii) The criminal case based on FIR registered at CR No.42 of 1987 was investigated and ultimately a charge sheet was filed and the learned JMFC, Dholka, had passed a committal order on 11.08.1987 and that case came to be registered as Sessions Case No.112 of 1987 in which the learned trial Judge, after hearing the arguments of the learned advocates for both the parties by rendering his judgement exh.88 dated 30.1.1999 was pleased to come to the conclusion that case against the accused nos.1, 2, 3 and 7 so far as it relates to offences punishable under Sections 161 and 162 of the Gujarat Panchayats Act was proved beyond reasonable doubt and so far as the case against all the accused for remaining offences, he was pleased to come to a conclusion that the prosecution failed to prove the case beyond the reasonable doubt against all the accused. By that judgement accused nos.1, 2, 3 and 7 were convicted for the offence punishable u/s 161 and 162 of the Gujarat Panchayats Act and each of them was sentenced to pay a fine of Rs.100/- and in default to undergo S.I. for 7 days. He acquitted all the accused including accused nos.1, 2, 3 and 7 for the rest of the offences i.e. for the offence punishable under Sections 143, 147, 148, 302, 325, 323 read with Section 149 of the Indian Penal Code. In this case accused produced medical evidence to show that in the incident accused no.1 - Chhagan Deva, accused no.4 - Dhara Kachra, accused no.3 - Maman Bhara, accused no.15 - Hindubhai Khengarbhai, accused no.16 - Merabhai Bhikhabhai, accused no.17 - Kanubhai Motibhai and accused no.18 Jakshibhai Ramubhai were injured and for their injuries Medical Officer had examined them and had issued medical certificate and therefore in the present case on hand the prosecution has no

other option except to accept the case of the accused that about 9 persons were injured and one of them Karman Jaising succumbed to the injuries later on.

In the like manner, in Criminal Case on the basis of the complaint at exh.88 lodged by the present Revision-Opponent No.1 after investigation a charge sheet was filed against the present complainant (Revision-Petitioner) and other prosecution witnesses examined in this case on hand. In that Criminal Case i.e. Sessions Case No.109 of 1987 a trial was conducted against 14 accused persons for the offences punishable under Sections 302, 307, 147, 148, 149, 323, 324, 325, 504 read with Section 25(1)(c) and 27 of the Arms Act.

(iv) In Sessions Case No.109 of 1987 based on complaint exh.86 lodged by Bharwad Chhagan Deva, the present complainant i.e. Abedin Turabhai Vahora was shown as accused no.1 and prosecution witnesses i.e. Sajauddin Nooruddin, PW No.10, Mohsinbhai Kasambhai, PW No.13, Tayabbhai Gulamali, PW No.15, Ibrahim were cited as accused nos.12, 7, 14 and 13 respectively.

21 From the above facts one thing is clearly established that the incident took place in which witnesses of both the sides had sustained injuries. It may be noted that in the present case i.e. Sessions Case No.112 of 1987 Kasambhai Yusubbhai, uncle of the complainant, who was Sarpanch of village Viridi, sustained injuries and succumbed to the same. Likewise, in Sessions Case No.109 of 1987 Karmanbhai Jesingbhai died during the course of the medical treatment and therefore in each case one witness had sustained fatal injuries and died as a result of said serious injuries.

22 Keeping in mind the aforesaid facts, the learned Judge of the trial Court appreciated the evidence of witnesses examined in the present case on hand. He had taken into consideration the omissions and contradictions found from each of such witnesses examined in the present case and ultimately he found that said witnesses were not reliable and no reliance can be placed on their evidence. Therefore, one of the factor which weighed with the learned trial Judge to come to the conclusion that the prosecution has failed to prove the case against the accused beyond reasonable doubt, is non acceptability of the evidence of the prosecution witnesses based on

omissions and contradictions.

23 Shri K.J. Panchal, the learned advocate for the Revision-Petitioner has vehemently argued that the learned Judge of the trial Court has unnecessarily put much stress on omissions and contradictions. As per his arguments, those omissions and contradictions are minor ones and those omissions and contradictions ought to have been ignored by the learned Judge of the trial Court. He also argued that the discrepancies found in their evidence were bound to be there because they were examined after a period of one year and eight months from the date of the incident. He has further argued that the learned Judge of the trial Court while appreciating the evident did not keep in mind the principles of appreciation of evidence. On this point he cited an authority of BHARWADA BHOGINBHAI HIRJIBHAI V. STATE OF GUJARAT reported in AIR 1983 SC 753 in which it is held that overmuch importance cannot be given to minor discrepancies. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses, therefore, cannot be annexed with undue importance and for this type of proposition the Hon'ble Supreme Court has given about 7 reasons in para 5 of that judgment. There cannot be any dispute with regard to legal position settled by the Honourable Supreme Court on the point of appreciation of evidence of witnesses much less discrepancies found in their evidence.

24 Mr Panchal then placed reliance on another case i.e. STATE OF H.P. V. LEKH RAJ AND ANOTHER reported in (2000) 1 SCC 247 in which the Honourable Supreme Court has held in para 7 that discrepancy has to be distinguished from contradiction. Whereas contradicition in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Here it may be noted that the learned Judge of the trial Court who has appreciated the evidence of prosecution witnesses in this case has not put much stress on discrepancy. He analysed the evidence of the prosecution witnesses and then came to the conclusion that there were serious contradictions and on the basis of that serious and material contradictions he came to the conclusion that witnesses were not reliable and therefore he did not accept the evidence of the prosecution witnesses.

25 If the evidence of the prosecution witnesses and the judgement of the trial court which is challenged in this Criminal Revision Application are read, it would become clear that the learned Judge of the trial Court came to a final conclusion of not accepting the case of the prosecution mainly on three grounds:-

- (i) The prosecution witnesses were not reliable and their evidence did not inspire the confidence of the trial Court.
- (ii) The prosecution witnesses who were admittedly present at the place of the occurrence have not explained the injuries sustained by accused nos.1, 3, 4, 7 and 15 to 18.
- (iii) The defence of accused with regard to self-defence was found probable on the principle of preponderance of probabilities.

26 Shri Panchal has argued that non-explanation of the injuries found on the body of the accused is not fatal to the prosecution case and for this he has cited an authority reported in (1973) 3 SCC 881. In the case of DWARKA PRASAD V. STATE OF U.P. reported in (1993) SCC Supl. (3) 141 the Honourable Supreme Court has discussed its following previous decisions on this point:

- (1) The State of Gujarat v. Bai Fatima, AIR 1975 SC 1478;
- (2) Lakshman Singh v. State of Bihar, AIR 1976 SC 2263;
- (3) Bhaba Nanda Sarma v. The State of Assam, AIR 1977 SC 2252;
- (4) Hare Krishna Singh v. State of Bihar, AIR 1988 SC 863
- (5) State of Rajasthan v. Madho, AIR 1991 SC 1065

After considering all the aforesaid authorities, the Honourable Supreme Court has observed in para 11 as follows:-

"As first impression there appears to be some conflict in the views expressed in the different judgments of this Court referred to above. But on proper reading with reference to the facts of each case, there is no basic difference and according to us this Court rightly in the case of The State of Gujarat v. Bai Fatima (supra) put in three categories the result which may follow from the facts of each case."

27. In view of the above legal position it is not always necessary to accept the arguments that non explanation of injuries on the body of the accused will not affect the prosecution case at all. As stated in the case of STATE OF GUJARAT V. BAI FATIMA reported in AIR 1975 SC 1478 one of the results for failure of prosecution to explain the injury on the person of the accused is that it makes the version of the appellant doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt. In the case of The State of Gujarat v. Bai Fatima, AIR 1975 SC 1478, it was said that when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow :

- "(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self defence.
- (2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.
- (3) It does not affect the prosecution case at all."

Keeping in mind the above legal position, the learned Judge of the trial Court has appreciated the evidence of the prosecution in which it is an admitted fact that some of the accused had sustained serious bodily injuries and out of them one died due to such injuries. Therefore, on appreciation of evidence of all the witnesses - oral as well as documentary - the learned Judge of the trial Court has come to the conclusion that non-explanation of injuries on the person of the accused by the prosecution witnesses renders the case doubtful and that factor creates a doubt with regard to correctness of the prosecution case.

28 On reading the judgement questioned in this revision application, I find that the prosecution has failed to prove the exact place of the incident. There is a conflicting evidence contradicting each other on the point of scene of offence. As observed by the learned Judge, as per panchnama and complaint at Exh.65 the incident took place in the field of Najmuddin Adambhai whereas the prosecution witnesses have led such evidence

that as per their say the incident took place in the field of Fakruddin Adambhai. The prosecution has examined Trikambhai Kalubhai at exh.36 who is one of the panch witnesses in whose presence the panchanama of scene of offence exh.37 was drawn and according to the evidence of this Trikambhai Kalubhai the incident took place in the field of Fakruddin Adambhai and therefore the prosecution witnesses shifted the place of offence from the field of Najmuddin Adambhai to the field of Fakruddin Adambhai. The prosecution has produced a map at exh.83 prepared by one witness Stalin Paul Christian (Exh.81). As per this map Exh.83 Survey Number of field of Najmuddin Adambhai is 108 while Survey Number of the field of Fakruddin Adambhai is 109. The learned Judge of the trial Court has come to a conclusion that this is a serious discrepancy with regard to place of scene of offence and one of the factors for not believing the case of the prosecution was also shifting of the place of scene of offence from one place to another.

29 Shri H.K. Parmar, the learned advocate for the accused has cited certain authorities and argued that in Criminal Revision Application, in exceptional cases, this Court should disturb the finding of the trial Court, if there is some glaring defect in the procedure or if there is manifest error on point of law as a result of which there has been flagrant miscarriage of justice. Shri H.K. Parmar has argued that the learned Judge of the trial Court conducted this present case filed on the basis of the complaint lodged by the Revision Petitioner and also Sessions Case No.109 of 1987 lodged by the present accused no.1 i.e. present Revision-Opponent no.1 and after considering the evidence in totality, he has not believed the case of the prosecution and ultimately acquitted the accused. He has further argued that the learned Judge of the trial Court has appreciated the evidence objectively by keeping in mind certain settled principles of law. At this stage, it is necessary to place on record the legal position with regard to appreciation of evidence settled in the case of Narain Prasad v. State of Rajasthan reported in AIR 1978 Rajasthan 162, wherein the Full Bench of the Rajasthan High Court has held that the revisional jurisdiction is normally to be exercised only in exceptional cases where there is a glaring defect in the procedure or there is manifest error of point of law and consequently there has been flagrant miscarriage of justice. The procedure of appraising the evidence led by two parties can be equated almost to the process of holding a balance the time honoured symbol of justice. Sometime when the two pans of balance are seemingly equal, even a slight evidence

circumstantial or otherwise, tilts the balance of one side and thereby probablise the case of one party as against the other. In this process of holding the balance what pieces of evidence, of course excluding inadmissible evidence would lean the balance in favour of one party is dependent on the evidence available in a given case. But asking the Revisional Court to say that this piece of evidence should have weighed more than the other, is nothing more than seeking reassessment of evidence. Appreciation of evidence is a mental process involving selection, assessment and conclusion. Which statement ought to weigh and how much cannot be rigidly laid down.

30 Therefore, now the arguments of Mr Panchal that evidence of the prosecution witnesses may be examined by this Court afresh and give its own finding is nothing but a reappraisal of evidence and it is a well settled principle of law that in Criminal Revision Application evidence appreciated by the trial Court cannot be reappraised. Still however, I have gone through the evidence of each witness in between the lines and I am satisfied that the learned Judge of the trial Court has rightly and justly come to the conclusion that said witnesses are not believable and their evidence does not inspire the confidence and therefore he has rightly discarded the evidence of the prosecution. He has taken into consideration the evidence of the prosecution on the point of injuries sustained by the accused also and he has come to the conclusion that accused have probablised their case of self-defence.

31 Considering the evidence of prosecution, no other conclusion other than the conclusion arrived at by the trial Court can be arrived at by this Court. When the powers of this Court in Criminal Revision Application are circumscribed, limited to examine the judgement of the trial Court on the point of error of law, I am of the opinion that the learned Judge of the trial Court has not committed any error on the point of law as a result of which it can be said that there is a flagrant miscarriage of justice.

32 Shri K.J. Panchal, the learned advocate for Revision-Petitioner has argued that looking to the facts and circumstances in this case and the judgment challenged in this Criminal Revision Application, learned Judge of the trial Court has not appreciated the evidence of witnesses examined by the prosecution in manner in which it ought to have been appreciated, and therefore, this revision may be allowed and the case may be remanded

to the trial Court. Mr Panchal has relied on a judgment rendered in case of K. Chinna Swamy Reddy v. State of Andhra Pradesh (supra) and submitted that this Court is required to set aside the acquittal judgement and send the case back to the trial Court for retrial. As discussed earlier, it is not the case of the revision-petitioner that prosecution was prevented by the trial Court to lead oral as well as documentary evidence.

The only case of the revision petitioner is that the learned Judge of the trial Court has not appreciated the evidence of witnesses examined by the prosecution in its true and correct perspective. As per the say of Mr Panchal, if this is the position, then this Court is of the opinion that it is of no use to remand the case for retrial. Here in this case on hand evidence is there on the record and the trial Judge has appreciated the evidence keeping in mind the legal position with regard to appreciation of evidence. At this stage, it is required to be noted that incident took place on 5/3/1987. We are in 2000, and therefore, practically about 13 years have already passed after the date of incident and 11 years after date of judgment which is challenged in this revision application.

33 In case of S.GUIN AND OTHERS V. GRINDLAYS BANK LIMITED reported in AIR 1986 SC 289, the facts were thus. Offences were committed on 31.10.1977. After committal, Magistrate, by his judgement dated June 27, 1978, acquitted the accused and complainant-Grindlays Bank Limited filed an appeal in the High Court of Calcutta in 1978 somewhere after 27th June 1978. In that case, the High Court felt that trial Court has missed the essence of offence with which the appellant had been charged, and therefore, there was failure of justice. Hence the Calcutta High Court had set aside the judgement of acquittal passed by the Magistrate and remanded the case for retrial.

34 As against the order of remand of case to trial Court, the accused preferred Criminal Appeal No.848 of 1985 in the Hon'ble Supreme Court of India and the Hon'ble Supreme Court observed in para 4 as follows:-

"We are of the view that following the above principle, the High Court should have dismissed the appeal before it. Even if it is disagreed with the view taken by the High Court in that regard, the gist of the offence punishable under Sec. 341, Indian Penal Code, having regard to the inordinate delay of nearly six years with it ensured after judgement of the High Court.

Nature and magnitude of the offence alleged to have committed by the appellant and the difficulties that may be, have to be encountered in securing the presence of witnesses in case of this nature, mainly seven years after the incident."

By observing above, the Hon'ble Supreme Court set aside the judgement of the trial Court and restored the order of the High Court passed in the case merely on the ground of inordinate delay of about seven years.

35. Shri H.K. Parmar, the learned advocate for revision-opponent has strenuously argued that this is not the case which can be said to be an exceptional case, and therefore, this revision application deserves to be dismissed.

36. I have gone through the judgment challenged in this Criminal Revision Application. I find no glaring procedural defect in passing the order of acquittal. I find no manifest error on the point of law, and therefore, this is not the case which can be said to be a case in which flagrant miscarriage of justice has occurred.

37. As discussed earlier, when the learned Judge of the trial Court has appreciated the evidence keeping in mind the facts and circumstances of the present case and decided Sessions Case No.109 of 1987 on 30th January 1989, it cannot be said that the judgement is perverse. Looking to the evidence led by the prosecution, man without a reasonable prudence would come to the same conclusion which is reached by the trial Court. It is well settled legal position that when there is possibility of two views from the same set of facts and circumstances, the view which is favourable to accused must be accepted by the Court. Thus, even if it is held that this Court should reappraise evidence and come to a different conclusion, then this Court cannot substitute its own findings based on same facts and circumstances.

38. For the foregoing discussion and observations, no interference in the findings given by the trial Court is called for. This Court finds no merits in this revision application and therefore, the same deserves to be dismissed and it is dismissed accordingly. Rule is discharged.

(mohd)

